

1. Applicant's Name: [REDACTED]

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, reasons for the discharge were determined to be the result of PTSD (drug abuse). The applicant was diagnosed with PTSD through the VA after being discharged.

b. **Board Type and Decision:** In a records review conducted on 7 March 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's PTSD and TBI outweighing the applicant's basis of separation (marijuana/drug abuse). Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN. The reentry code was upgraded to RE-3.

Please see Section 9 of this document for more detail regarding the Board's decision.

Board member names available upon request.

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Misconduct (Drug Abuse) / AR 635-200, Chapter 14-12c (2) / JKK / RE-4 / General (Under Honorable Conditions)

b. **Date of Discharge:** 25 October 2010

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** 2 December 2009 and 13 August 2010 (for vacation of suspended separation)

(2) **Basis for Separation:** The applicant was informed of the following reasons: On or about 26 May 2009, the applicant tested positive for the wrongful use of a controlled substance (marijuana). Which indicated the wrongful use on or between 26 April 2009 and 26 May 2009.

(3) **Recommended Characterization:** The recommendation was the applicant be retained; however, if the separation authority decided to separate the applicant the recommendation was General (Under Honorable Conditions).

(4) **Legal Consultation Date:** 30 December 2009

(5) **Administrative Separation Board:** NA

(6) Separation Decision Date / Characterization: 23 August 2010 (the suspended separation on 4 January 2010, was vacated) / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 26 May 2009 / NIF

b. Age at Enlistment / Education / GT Score: 23 / GED / 112

c. Highest Grade Achieved / MOS / Total Service: E-3 / 88M10, Motor Transport Operator / 4 years, 2 months, 29 days

d. Prior Service / Characterizations: RA, 27 July 2006 – 25 May 2009 / HD

e. Overseas Service / Combat Service: SWA / Afghanistan (3 June 2009 – 26 May 2010); Iraq (28 February 2007 – 28 December 2007)

f. Awards and Decorations: ACM-CS, ARCOM-2, AAM, MUC, AGCM, NDSM, GWOTSM, ICM-CS, ASR, OSR-2, NATOMDL, CAB

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Military Police Report Number 00720-20080MPC056, 30 March 2008, reflects the applicant was apprehended and charged with Driving Under the Influence of Alcohol (CRS 42-4-1301(1)(A)) (Off Post); Drove Vehicle w/Excessive Alcohol Content > .08 (CRS 42-4-1301(2) (A)) (Off Post); Traffic Violations, Other – Careless or Reckless Driving (CRS 42-4-1402) (Off Post); Left Scene without Providing Required Information after Striking Unattended Vehicle (CRS 42-4-1604) (Off Post); ALC Related Duty to Report Accidents; Failed to Report Accident (CRS 42-4-1606(1)) (Off Post).

Uniform Summons & Complaint or Penalty Assessment, Colorado State Patrol, 30 March 2008, Property Damage Report, reflects the applicant was charged with the offenses of Driving a Vehicle While Under the Influence of Alcohol or Drugs or both, Driving a Vehicle with Blood Alcohol Content of 0.08 or more; Careless Driving; left the scene w/o providing required information after striking unattended vehicle; and Failed to Notify Police of Accident.

General Officer Administrative Reprimand, 24 July 2008, reflects on 30 March 2008, the applicant was involved in a traffic accident when the applicant's car collided with a parked vehicle in Colorado Springs. The applicant then fled the scene of the accident and drove home. The State Patrol was dispatched to investigate the accident and the officer subsequently contacted the applicant at their residence. The applicant was apprehended and transported to the Fort Carson Police where the police advised the applicant of the express consent for certain tests. A breath alcohol test established the applicant's breath alcohol level at .116 percent (B.R.A.C.).

Army Substance Abuse Program (ASAP) Enrollment Form, 4 March 2009, reflects the applicant was command referred in the ASAP.

Patient Progress Report, undated, reflects the applicant completed ASAP and returned to duty.

Electronic Copy of DD Form 2624, 5 June 2009, reflects the applicant tested positive for THC 87 (marijuana), during an Inspection Unit (IU) urinalysis testing, conducted on 26 May 2009.

FG Article 15, undated, for wrongfully using marijuana between on or about 26 April 2009 and 26 May 2009. The punishment consisted of a reduction to E-1; forfeiture of \$699 pay per month for two months (suspended); and extra duty for 45 days suspended, and restriction to the limits of the PX and MWR, once a week under the supervision of the 1SG, suspended.

Several Developmental Counseling Forms, for various acts of misconduct.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: None

(2) AMHRR Listed: Report of Medical Assessment, 11 June 2010, the health care provider noted in the comments section: Continue MH.

Report of Behavioral Health Evaluation (BHE), 10 August 2010, reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand and participate in the proceedings. Met the retention requirements of chapter 3, AR 40-501. The applicant was cleared for any administrative actions deemed appropriate by command. The form reflects a diagnosis.

Report of Medical History, 8 September 2010, the applicant noted behavioral health issues and the examining medical physician noted in the comments section: Currently actively, next appointment 16 August sees them 1x weekly.

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 and DD Form 214.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names

(2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board) sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(5) Paragraph 14-3 prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(6) Paragraph 14-12c(2) terms abuse of illegal drugs as serious misconduct. It continues; however, by recognizing relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation under paragraph 14-12a or 14-12b as appropriate.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKK" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, misconduct (drug abuse).

f. Army Regulation 601-210, (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1 defines reentry eligibility (RE) codes: RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends the reasons for the discharge were determined to be the result of PTSD. The applicant was diagnosed with PTSD through the VA. The applicant did not submit any evidence, other than the applicant's statement, to support the contention the discharge resulted from any medical condition. The AMHRR contains Report of Medical Assessment, 11 June 2010, which reflects the health care provider noted in the comments section: Continue MH. Report of Behavioral Health Evaluation (BHE), 10 August 2010, reflects the applicant was mentally responsible with a clear-thinking process and had the mental capacity to understand

and participate in the proceedings. Met the retention requirements of chapter 3, AR 40-501. The applicant was cleared for any administrative actions deemed appropriate by command. The form reflects a diagnosis. Report of Medical History, 8 September 2010, the applicant noted behavioral health issues and the examining medical physician noted in the comments section: Currently actively, next appointment 16 August sees them 1x weekly. The BHE, Report of Medical Assessment, Report of Medical History were considered by the separation authority.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder, TBI, PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder and TBI. The applicant is also diagnosed and service connected by the VA for PTSD. Service connection establishes that the applicant's PTSD existed during military service.

(3) Does the condition or experience excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's PTSD and TBI mitigate the applicant's discharge. Given the nexus between PTSD, TBI, and self-medicating with substances, the marijuana use that led to the applicant's separation is mitigated.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the applicant's PTSD and TBI outweighed the applicant's drug abuse offense.

b. Response to Contention(s): The applicant contends the reasons for the discharge were determined to be the result of PTSD. The applicant was diagnosed with PTSD through the VA. The Board liberally considered this contention and found it credible. The applicant's PTSD and TBI outweighed the applicant's drug abuse offense.

c. The Board determined the discharge is inequitable based on the applicant's PTSD and TBI outweighing the applicant's drug abuse offense. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a. Accordingly, the narrative reason for separation changed to Misconduct (Minor Infractions) with a corresponding separation code of JKN. The reentry code was upgraded to RE-3.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's PTSD and TBI outweighed the applicant's drug abuse offense. Therefore, the prior characterization is no longer appropriate.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001309

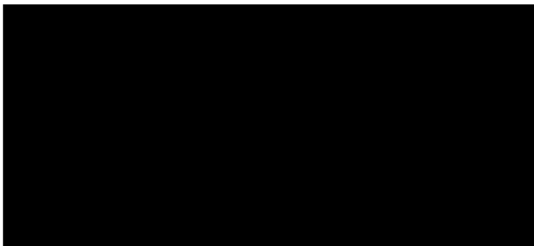
(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts. Therefore, the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

(3) The RE code will change to RE-3.

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: RE-3
- e. Change Authority to: AR 635-200

Authenticating Official:



AWOL – Absent Without Leave
AMHRR – Army Military Human
Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation
Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police
MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty
OBH (I) – Other Behavioral
Health (Issues)
OMPF – Official Military
Personnel File
PTSD – Post-Traumatic Stress
Disorder
RE – Re-entry
SCM – Summary Court Martial
SPCM – Special Court Martial

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized
Discharge
UOTHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs